



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
100 ALABAMA STREET, S.W.
ATLANTA, GEORGIA 30303-3104

August 7, 1997

MEMORANDUM

SUBJECT: Formal EPA Review of Revisions to Kentucky's Water Quality Standards

FROM: Robert F. McGhee, Director
Water Management Division

A handwritten signature in dark ink, appearing to read "R F McGhee".

TO: John H. Hankinson, Jr.
Regional Administrator

We have completed our review of the adopted revisions to Kentucky's water quality standards regulations which were submitted by letter to EPA dated August 11, 1995. The adopted revisions, in conjunction with the public review process described below, comprise the Commonwealth's 1993-96 triennial review of water quality standards. These revisions were adopted as a new regulation, 401 KAR 5:030, "Nondegradation policy implementation methodology," on July 12, 1995. The water quality standards were certified by the General Counsel of the Cabinet's Office of Legal Services as duly adopted pursuant to Kentucky law by signature within the submittal letter.

The public meetings, hearings and previous comments on the five regulations that comprise the State's water quality standards revealed significant discord on several proposed revisions. Given this unresolved opposition and evolving national issues such as dissolved metals, dioxin, and biocriteria, the Cabinet withheld four regulations and proceeded with revising and promulgating a new regulation, 401 KAR 5:030, to stand as the State's antidegradation implementation methodology, an essential component of the State standards. The current EPA-approved regulations, 401 KAR 5:026, 5:029, and 5:031, remain in effect and any revisions to these regulations will be addressed in the next triennial review.

As part of the Commonwealth's formal submittal of the triennial review, EPA received a letter from Jack A. Wilson, Director, Division of Water, stating that the Cabinet conducted a review of the use attainability analysis for Paddy's Run. (Paddy's Run is the only segment in the Commonwealth assigned uses which do not include EPA's Section 101(a)(2) fishable/swimmable uses.) We concur with the Commonwealth's conclusion that no new information was available to indicate that uses other than those currently designated for this stream are now attainable. Therefore, the current designated uses were retained for this stream. This submittal meets the requirements of 40 CFR § 131.20(a), and no further action by EPA is warranted at this time.

On August 16, 1995, EPA Region 4 solicited comments from the U.S. Fish and Wildlife Service (FWS) Region 4 on the new regulation, 401 KAR 5:030. The FWS endorsed these revisions in a letter dated September 11, 1995, stating the Commonwealth's Tier 3 and Tier 2 designations would provide additional protection for these important national and State resources. (See attached letter.)

As described above, the focus of the revisions adopted during the triennial review was to identify antidegradation implementation actions required for waters of the Commonwealth. The revisions also listed Tier II and Tier III waters in the water quality standards regulation. The Commonwealth has chosen a designational (water body-by-water body) approach for protection of high quality waters. Under the Commonwealth's approach, waters can be designated as Tier II water bodies either prior to an antidegradation review, e.g., during the triennial review, or during the antidegradation review associated with the NPDES permitting process. The designational approach relies on a weighted assessment of chemical, physical and biological data, and other information in the selection of Tier II waters.

States are unlikely to have an aquatic database for **all** of a state's water bodies sufficient to determine which of these water bodies should be subjected to the Tier II process. (In Kentucky's case, only 45 water body segments have been designated as Tier II waters.) As described in the EPA Region 4 draft antidegradation guidance for Tier II procedures, it is expected that, at a minimum, substantial and detailed EPA review will be required to ensure full compliance with the federal policy for these cases. During review of a state's water body-by-water body approach, EPA will place special emphasis on the procedures by which the state will designate additional water bodies as Tier II waters, e.g., during the NPDES permitting process.

Based on our initial review of the adopted revisions, we identified several concerns regarding complete compliance by 401 KAR 5:030 with all aspects of the federal policy. We submitted a list of questions to the Kentucky Department of Environmental Protection (KDEP) by letter dated November 13, 1995, and responses to these questions were received by letter dated December 8, 1995, both of which are attached. Our review of the revisions adopted by the Commonwealth and the clarifications/details provided by KDEP are summarized below.

401 KAR 5:030. Necessity and Function

The adopted language states that chapter 5:030 "... sets forth a methodology to implement the nondegradation (antidegradation) policy contained in 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy." None of the procedures in chapter 5:030 apply to the implementation of antidegradation for nonpoint sources. However, based on discussions and other communications with KDEP staff, other provisions of Kentucky water quality regulations govern the application of the antidegradation policy to nonpoint source effects. (See KDEP letter dated December 8, 1995.) Therefore, we recommend that the Commonwealth adopt language expressly stating this in the next review of water quality standards conducted by the Commonwealth.

401 KAR 5:030. Section 1. Implementation of Nondegradation Policy.

Section 1 describes the criteria for categorization of "waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, i.e., Tier II waters, the criteria for categorization of Outstanding National Resource Waters (ONRWs), i.e., Tier III waters, and the procedures for implementation of antidegradation for waters designated as ONRWs. Waters other than ONRWs or Tier II waters are "use protected waters," i.e., Tier I waters.

Subsection 1.

This subsection creates three water body types in the Commonwealth, as in the federal antidegradation policy:

Tier I - Use protected waters,

Tier II - Water bodies whose quality exceeds that necessary
to support propagation of fish, shellfish, and
wildlife and recreation in and on the water, and

Tier III - Outstanding National Resource Waters,

Subsection 2.

The criteria for selection of ONRWs as outlined in this subsection are consistent with federal requirements in 40 CFR Section 131.12 and relevant guidance published by EPA.

Subsection 3.

This subsection contains the criteria for selection of Tier II waters. The adopted criteria for selection of Tier II waters are different from those in the federal regulation at 40 CFR Section 131.12(a)(2). These differences form a basis for EPA disapproval of portions of this subsection.

As discussed above, Kentucky chose to use a designational approach for implementation of Tier II requirements. In response to an EPA request for the rationale for using such an approach, KDEP stated the following:

"The Commonwealth chose the designational approach because it was more reasonably and realistically implementable. A drawback to the parameter by parameter approach was lack of data on parameters in unmeasured streams. To use the parameter by parameter approach, it was our contention that it would take (at a minimum) two years of monthly data to determine the background concentration of any one parameter... The gathering of this data would be both expensive and time-consuming and was met with great opposition by the regulated community because all permitting on streams that had no data would stop for two years until the data were collected. It also meant that some streams with selected data may have to have new data collected if a particular parameter had not been measured. The final result would in many cases result in a stream or segment being Tier II for some parameters and Tier I for others. Determining permit limits in such a situation would be too complex. An additional complication would be in determining what a lowering of water quality would be for each parameter... The Cabinet chose a more straight forward approach to categorizing Tier II waters by using a biological approach that also included waters recognized as unique in the State. Once a water is determined to be a Tier II water, each pollutant on the KPDES permit will be subjected to the strict antidegradation requirements, which go above and beyond our conservative water quality-based approach already in place for use protected waters."

In lieu of the parameter-by-parameter approach, the Commonwealth adopted the following categories of waters as Tier II waters:

- 1) Kentucky Wild Rivers;

- 2) All Outstanding Resource Waters (ORWs), other than ORWs which are so designated solely due to the presence of federally threatened or endangered aquatic species;
- 3) Waters containing fish communities rated as "Excellent" by the use of the Index of Biotic Integrity; and
- 4) Waters in the cabinet's reference reach network.

Outstanding Resource Waters which are also Tier II waters include the following:

- 1) Waters designated under the Federal Wild and Scenic River Act;
- 2) Waters identified under the Kentucky Nature Preserves Act; and
- 3) Other waters may be included through cabinet action, including:

Segments flowing through or bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are parts of unique geological or historical area recognized by state or federal designation,

Segments that are part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics, or two of the following criteria:

Support a diverse or unique native aquatic flora or fauna;

Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat, or

Provide a unique aquatic environment within a physiographic region.

In the final Great Lakes Water Quality Guidance (60 F.R. 15366), EPA specified procedures for identifying high quality waters (Tier II waters) on a pollutant by pollutant basis. While a designational approach for implementation of Tier II of antidegradation was not absolutely prohibited under the final Guidance, such an approach was envisioned only under very limited circumstances, with a key consideration being whether such designations are fully inclusive of Tier II waters. Unfortunately, Kentucky's designations are not fully inclusive.

Based on review of the adopted regulation and the materials submitted by the Commonwealth, the above categories do not explicitly include the criteria for water quality which exceeds the "levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water..." Therefore, the focus of our review was to determine whether (1) the operational definition of the Commonwealth's Tier II waters was sufficiently close to the federal definition and, (2) the Commonwealth's implementation of the policy in the future, e.g., the designation of additional Tier II water bodies during the NPDES permitting process, occurs in

generally the same situations or circumstances as envisioned by the federal policy. The Commonwealth's procedures are contained in Subsection 5 of this section.

Regarding the definition of Tier II waters in the Commonwealth, the main issue is whether KDOW has included in the list on page 4 of this memo, appropriate selection criteria which can be considered as operationally equivalent to the federal requirement of Tier II waters, i.e., "where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water." The selection criteria adopted by the Commonwealth include waters of "*exceptional*" aesthetic or ecological value, part of undisturbed or relatively undisturbed watersheds which possess "*outstanding*" water quality characteristics, support "*unique*" flora or fauna, possess "*unusual and uncommon*" aquatic habitat, provide "*unique*" aquatic environment, contain fish communities rated as "*excellent*," or are listed in the Commonwealth's reference reach network. Water bodies with these characteristics are certainly Tier II waters, however, it is our position that there are other waters of the Commonwealth which should be subjected to the Tier II process prior to allowing lowering of water quality to occur in these waters.

In fact, EPA has historically taken the position that "All parameters do not need to be better quality than the State's ambient criteria for the water to be deemed a 'high quality water'." (Water Quality Standards Handbook: Second Edition, USEPA, August 1994). Therefore, the provisions adopted by the Commonwealth set up a process for protection of what EPA considers as a subgroup of Tier II waters in Kentucky, and the newly adopted revisions do not require consideration of all candidate waters for application of the Tier II decision process.

Regarding the issue of whether implementation of Tier II requirements occurs in generally the same situations or circumstances as envisioned by the federal policy, there is no requirement, per se, in the adopted regulations, that the Commonwealth determine the applicability of Tier II requirements for new and expanded discharges, i.e., when the possible lowering of water quality is proposed. The adopted procedures, as clarified in the December 8, 1995 letter from KDOW, allude to a process where the necessary data would be gathered to determine if a segment is a Tier II water prior to the issuance of a new or expanded permit, should sufficient resources be available or should the proposed discharger conduct the studies.

In response to the question,

"The Cabinet's statement in the RIA for 404 KAR 5:026 that 'the DOW will perform field assessments of waters with high quality potential and will determine all classifications based on its assessment or on petitions submitted by the public is interpreted to mean that, before the issuance of any new or expanded discharge permit, the Commonwealth will determine the appropriate antidegradation category (Tier I, II or III) for each water body that is not presently listed in Section 3 of 401 KAR 5:030. Further it is our understanding that the Commonwealth can deny any permit to waters of the state. Is this interpretation correct?"

KDOW stated the following:

"The statement in the RIA cannot be applied to 401 KAR 5:030 since the revisions in 401 KAR 5:026 were withdrawn. With the adoption of 401 KAR 5:030, all waters not listed in Section 3 were categorized as use protected waters (Tier I) and receive full protection for all

appropriate uses. This means that applicable criteria for warmwater aquatic habitat use, primary and secondary contact recreation and domestic water supply (if applicable) apply to these waters. As stated in the answer to question 7, the Cabinet will prioritize waters for field assessments based on their potential to be recategorized as Tier II waters to verify their status (as resources allow). The cabinet has the statutory authority to deny permits to waters of the state."

The Kentucky Division of Water, in a January 28, 1997 letter to EPA, also provided additional information on the issue of future consideration of Tier II waters:

"... for streams that have not been designated for antidegradation purposes, a permit request for a new or expanded discharge triggers a review of any instream and land use data to screen the site for potential high quality status. Undesignated streams will never be assumed to be use protected. If there is a reasonable possibility that the stream could be considered high quality, the Division conducts a biological survey."

"Because the antidegradation regulation applies only to situations with new or expanded discharge applications ... resources can be focused on those potential high quality streams that are vulnerable to degradation instead of considering all of the state's undesignated waters. Presently, this is the only practical way in which the Division can carry out the program, and it also is protective of the designated and potential high quality waters in the state."

Considering the January 28, 1997 information regarding future consideration of additional water bodies for Tier II consideration, it is our conclusion that the Division of Water has adequately documented its intent to conduct an analysis of receiving waters for new and expanded discharges, but only for the adopted selection criteria discussed above. Thus, this does not resolve the identified concerns for consideration of all of the waters considered to be candidates for Tier II protection, as envisioned by the federal antidegradation policy.

In order to fully comply with the federal requirements at 40 CFR Section 131.12, the Commonwealth should modify this subsection to include additional Tier II selection criteria. The additional selection criteria must address the inclusion of Tier II waters where water quality conditions exceed the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, even though the waters are not "unique," "exceptional," etc. The additional selection criteria could use either the designational approach or the pollutant-by-pollutant approach. As an example, the preamble to the proposed Great Lakes Water Quality Guidance stated that a "generic measure of water quality as opposed to water quality criteria for individual pollutants" could possibly meet the 40 CFR Section 131.12(a)(2) requirement as an alternative to a pollutant-by-pollutant approach for implementation of Tier II of antidegradation.

The issue of how social and economic development considerations will be addressed during the Tier II process is linked to a determination of the degree of degradation which is allowed under the discharge levels/discharge criteria found at subsection 5. (See discussion below.)

Subsection 4.

The requirements for protection of ONRWs contained in this subsection are the equivalent to

those in the federal policy at 40 CFR Section 131.12.

Subsection 5.

This subsection contains the procedure for implementing Tier II provisions for point sources. Differences between the federal Tier II decision process and the procedures adopted by the Commonwealth also provide a basis for disapproval of portions of this subsection.

New or expanded domestic discharges to Tier II waters are permitted at effluent limits no greater than 10 mg/l BOD₅, 2 mg/l NH₃-N, and 7 mg/l DO (10-2-7). These limits are permitted without site-specific consideration of the amount of instream lowering of DO levels (as long as instream DO criteria levels are met downstream of the discharge). This is equivalent to a decision to consider the amount of DO degradation associated with 10-2-7 limits as de minimis or insignificant for all instances of their application.

The Commonwealth has also stated that, as a general rule, the disposal of treated domestic wastewater through land application methodologies is not a feasible alternative to discharging treated effluent due to the soil and subsurface conditions in the Commonwealth. This position appears to be well-founded as a general conclusion, but there may be specific locations where land application/disposal is a reasonable alternative for a specific discharge.

Also, this paragraph of the subsection does not require the evaluation of alternate discharge locations that would eliminate the need for the discharge into a Tier II water body, or require consideration of whether the lowering of water quality supports important social and economic development, even if unavoidable. (Under the adopted language, this is considered only where a permit applicant determines that the 10-2-7 limits cannot be met, pursuant to paragraph 5(b)(1) of this subsection.)

In summary, in order for this subsection to be approvable as the full implementation methodology for Tier II of antidegradation, the Commonwealth should provide an analysis showing that the subsection 5(a)(1) limits will result in de minimis level of lowering of water quality in Tier II water bodies. (If the 10-2-7 limits are shown to result in de minimis degradation in Tier II waters, no further revisions to this portion of the regulation would be necessary to comply with the provisions of 40 CFR Section 131.12.)

New unpermitted or expanded domestic discharges are also permitted at the following limits for other parameters: 10 mg/l total suspended solids, 1 mg/l total phosphorus, and 200 colonies per 100 ml fecal coliform bacteria over a 30 day period.

For parameters with water quality criteria based on cancer as an endpoint, all new unpermitted and expanded discharges (both domestic and non-domestic) are permitted to meet instream water quality criteria levels downstream of the discharge. The Commonwealth's discharge criteria for carcinogens allow these parameters to be discharged at levels which will result in instream concentrations equal to the instream criteria values for these parameters.

The Commonwealth has stated that, in part, the rationale for this decision for carcinogens included the fact that the Commonwealth's water quality criteria for carcinogens are based on a level of protection of human health of one in one million, which is ten times more protective than

EPA has allowed in other states, i.e., one in one hundred thousand. Although this is true, the Commonwealth's adopted procedures do not address degradation of water quality for these parameters in a manner different from Tier I water bodies. Therefore, lowering of water quality for carcinogens is permitted to occur without regard to a Tier II decision process. This is inconsistent with the provisions of 40 CFR Section 131.12(a)(2).

This subsection also requires that any other parameter in either a domestic or nondomestic discharge will be restricted to $\frac{1}{2}$ of the applicable water quality instream criteria, i.e., only $\frac{1}{2}$ of the allowable concentration is allowed downstream of the discharge. This is equivalent to a decision to consider as insignificant or de minimis the amount of lowering of water quality from all other parameters up to 50 percent of the assigned criteria. EPA defers to the Commonwealth in the selection of 50 percent as appropriate for water bodies of the Commonwealth.

Under the adopted regulation, permits for new unpermitted and expanded discharges will be issued if the above limits can be achieved. All permit renewals which result in no increase in pollutant loading are exempt from Tier II requirements. No new zones of initial dilution are allowed in Tier II waters.

Should a discharger not be able to meet the above limits, the adopted regulation provides that the discharger may request less stringent limits based on a demonstration to the Cabinet including:

An alternatives/enhance treatment analysis (including alternate discharge locations), and

A pollution prevention analysis.

Less stringent limits (and the subsequent additional lowering of water quality) are allowable if alternate treatment/disposal techniques are justified based on the inability of a discharger to meet the Tier II limits specified in this subsection.

The Commonwealth has stated that any decisions regarding determinations of important economic or social development will be made at this point in the procedures:

"The process for determining under what circumstances economic and social development is important enough to allow a lowering of water quality has not been developed. The Cabinet and the review panel spent many hours discussing this process and came to no consensus. The Cabinet feels this is an important local decision that needs to be determined on a case by case basis. It is envisioned that procedures in 5(b) will incorporate an economic and social importance evaluation by the very nature of the analyses. The less stringent level of treatment decision (if allowed) will have been made with this in mind."

The absence of specific regulatory-based procedures for a determination of important social or economic development is not, by itself, a reason to conclude that the adopted procedures do not comply with the portion of the federal regulation which includes the reference to that determination. However, it is recommended that the implementation of this provision be monitored by EPA to determine if determinations made under this subsection are made using the types of socioeconomic information as envisioned by EPA in the document, "Interim Economic Guidance for Water Quality Standards: Workbook" (EPA-823-B-95-002, March 1995). Should the Commonwealth's implementation of this provision be consistent with this component of EPA's Tier

If decision process, no further action is necessary. However, should implementation substantially differ from EPA's Tier II decision process, EPA should notify the Commonwealth that further revision of this subsection would be necessary to comply with the federal requirements.

As mentioned previously, an EPA determination regarding the Tier II decision process for the 10/2/7 limits for domestic discharges depends on resolution of the issue of whether the degradation resulting from implementation of 10/2/7 limits is justified by the Commonwealth as being de minimis. If a justification regarding the significance of the degradation cannot be developed by the Commonwealth, a reference to a determination in regard to social or economic development should be included in the adopted procedures prior to allowing any "non-de minimis" degradation to occur, in order to fully comply with the 40 CFR Section 131.12 requirements.

Subsections 6/7.

These two subsections contain requirements for implementation of Tier I of the Commonwealth's antidegradation policy, and the provision that more stringent requirements may be required of dischargers based on local government ordinances. Subsection 6 also defines use protected waters (Tier I waters) as "all surface waters ... not listed as outstanding national resource waters or waterbodies whose quality exceeds that necessary to support fish, shellfish, and wildlife and recreation in and on the water."

Section 2. Procedures for Recategorizing Waters.

This section contains the steps for recategorizing ONRWs and waterbodies whose quality exceeds that necessary to support fish, shellfish, and wildlife and recreation in and on the water. Reclassification of waters to the ONRW category is also governed by the procedures in 401 KAR 5:026, which consist of procedures for formal ratification for reclassification of waters from one use classification to another. (Tier II waters in the Commonwealth are not subjected to those reclassification requirements.)

Subsection 1.

This subsection establishes the requirement that the cabinet may propose to recategorize waters as ONRWs or Tier II waters, and the cabinet is required to provide public notice and an opportunity for a public hearing.

Subsection 2.

This subsection establishes that any person may file a petition to the cabinet for recategorizing a water to an ONRW or Tier II water. The petitioner has the burden of proof that the recategorization is appropriate. After review of the petition, supporting documentation, and any comments prior to granting or denying recategorization, the Cabinet will provide a copy of the decision to the petitioner and other interested parties.

Subsection 3.

This subsection requires the cabinet to publish notice of any recategorization. This subsection also requires that the cabinet will propose to have all recategorized waters promulgated

as an amendment to the regulation during the subsequent triennial review of water quality standards. (All permitting requirements, i.e., limits or conditions, will apply after the date of recategorization.)

Subsection 4.

This subsection establishes the requirements for recategorization petitions. For ONRWs, the following requirements apply:

- A map showing the segment and any existing and proposed discharge points,
- Existing uses and water quality data for the segment (the cabinet may require the collection of additional data),
- A description of general and specific land uses of the area,
- The existing and designated uses of the waters upstream and downstream of the segment proposed for recategorization,
- General physical characteristics of the segment,
- The 7Q10 and harmonic mean flow of the segment and the frequency of the time when there is no natural flow in the segment,
- An assessment of existing and potential aquatic life habitat in the segment and upstream waters, i.e., documentation of the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota,
- The rationale for the recategorization, and
- The rationale to support the national significance of the segment.

For Tier II waters, the following requirements apply::

- A map showing the segment and any existing and proposed discharge points,
- A description of general and specific land uses of the area,
- The 7Q10 and harmonic mean flow of the segment and the frequency of the time when there is no natural flow in the segment, and
- Fish collection data and an Index of Biotic Integrity calculation for the segment if that is the rationale for recategorization

Section 3. List of Surface Water Categories.

This section lists the three segments categorized as ONRWs (portions of the Red River, the Underground River System within Mammoth Cave National Park, and the Big South Fork of the Cumberland River) and the 45 segments categorized as waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. All other waters not listed are categorized as use protected waters.

Section 4. Document Incorporated by Reference.

This section states that references to biological assessments in the regulation refer to those conducted by the document, "Methods for Assessing Biological Integrity of Surface Water."

CONCLUSIONS

The following provisions of the adopted regulation should be disapproved by EPA:

401 KAR 5:030 Section 1(3):

In order to fully comply with the federal requirement, the Commonwealth should modify this subsection to include additional selection criteria under subsection 1(3)(e). The additional selection criteria must address the inclusion of Tier II waters where water quality conditions exceed the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. The additional selection criteria could use either the designational approach or the pollutant-by-pollutant approach.

401 KAR 5:030 Section 1(5)(a)(5):

The Tier II decision process should be modified to include consideration of lowering of water quality for carcinogens in the same or similar manner for other parameters.

Considering these conclusions, it is our recommendation that the above provisions of 401 KAR 5:030 be disapproved, and the Commonwealth should adopt replacement standards within 90 days of the formal EPA action. The rationale for this position is that, although the adopted provisions provide a significant level of protection for the segments designated by the Commonwealth as Tier II waters, the adopted regulation fails to include procedures for other waters which are candidates for the Tier II decision process, fails to include adequate selection criteria, and fails to address degradation of carcinogenic parameters in a manner different from Tier I waters.

In addition to the two subsections for which an EPA disapproval action is recommended, we also recommend that additional information/documentation be requested, as follows:

401 KAR 5:030 Section 1(5)(a)(1):

The Commonwealth should be asked to provide further justification on the decision in regard to the amount and significance of degradation which will result from the 10-2-7 limits. If such justification supports the decision, and the 10-2-7 limits are shown to result in de minimis degradation in Tier II waters, no further revisions to this portion of the regulation would be necessary to comply with the provisions of 40 CFR Section 131.12.

If the issue of de minimis degradation cannot be successfully resolved, either this subsection or 401 KAR 5:030 Section 1(5)(b) should be modified to include consideration of no discharge alternatives at this point in the Tier II decision process. (See discussion below.)

401 KAR 5:030 Section 1(5)(b):

An EPA determination regarding this portion of the procedures in regard to domestic discharges depends on resolution of the issue of whether the degradation allowed under the first part of this subsection is justified by the Commonwealth as being de minimis.

If a justification regarding the significance of the degradation cannot be developed by the Commonwealth, a reference to a determination in regard to social or economic development should be included in the adopted procedures prior to allowing any "non-de minimis" degradation to occur, in order to fully comply with the 40 CFR Section 131.12 requirements.

A letter reflecting the above position is attached.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

AUG 16 1995

Mr. Lee A. Barclay
Field Office Supervisor
U.S. Fish and Wildlife Service
Region IV
446 Neal Street
Cookeville, Tennessee 38501

Dear Mr. Barclay:

The Environmental Protection Agency has received a revision to the Kentucky's Water Quality Standards Regulations adopted by the Commonwealth of Kentucky and became effective on July 12, 1995. The revision was submitted for EPA review on August 15, 1995.

As part of our review, we are soliciting your comments on Chapter 401 KAR 5:030, Nondegradation policy implementation methodology. A copy of this new chapter which contains the procedure and criterion for implementing the Commonwealth's antidegradation policy as well as a list of waterbodies presently included in each antidegradation category is enclosed.

We understand that Kentucky's Department of Water staff has provided the Service with the proposed revisions at several points during their review of the water quality standards regulations. Also, it is our understanding that the Service has provided support for these revisions during the Commonwealth's public review process.

To facilitate our review of these revisions, we request that your comments be submitted within 30 days of receipt of this letter. If you should have any questions or need further information, please call Eve Zimmerman at (404) 347-3555 ext. 6637. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Fritz Wagener".

Fritz Wagener, Chief
Water Quality Standards Section

Enclosure

cc: Garland B. Pardue,
Acting Assistant Regional Director
USFWS Regional Office



United States Department of the Interior

FISH AND WILDLIFE SERVICE

446 Neal Street
Cookeville, TN 38501

September 11, 1995

Mr. Fritz Wagener
Chief, Water Quality Standards Section
U.S. Environmental Protection Agency
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Dear Mr. Wagener:

The U.S. Fish and Wildlife Service has reviewed the Nondegradation Policy implementation methodology, criterion for implementing the antidegradation policy, and the list of waterbodies presently included in each antidegradation category proposed by the Commonwealth of Kentucky and contained in Chapter 401 KAR 5:030. The Service endorses this revision to Kentucky's water quality standards.

The Service commends the Natural Resources and Environmental Protection Cabinet, Division of Water, for the inclusion of the Underground River System of Mammoth Cave National Park, the Big South Fork of the Cumberland River, and the Red River in the Tier III category, Outstanding National Resource Waters. In addition, we strongly support the inclusion of the Cabinet's reference reach network in the Tier II category, waterbodies whose quality exceeds that necessary to support recreation in and on the water and the propagation of fish, shellfish, and wildlife. These designations will provide additional protection for these important national and state resources.

We appreciate the opportunity to comment. Should you have any questions or need further information, please contact Steve Alexander of my staff at 615/528-6481.

Sincerely,

Lee A. Barclay, Ph.D.
Field Supervisor

xc: Terry Anderson, KDOW, Frankfort, KY